

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRIAN BILLUPS,

Petitioner,
v.

ORDER

15-cv-688-bbc
06-cr-213-bbc

UNITED STATES OF AMERICA,

Respondent.

Petitioner Brian Billups has filed an application for certificate of appealability from the October 29, 2015 order denying his motion for post conviction relief under 28 U.S.C. § 2255. The motion will be denied.

A certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make this showing, a defendant must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)).

Defendant's post conviction motion was based on the recent opinion of the Supreme

Court in Johnson v. United States, 135 S. Ct. 2551 (2015). Petitioner alleged that it was error for this court to classify his false imprisonment conviction as a crime of violence and that he should be resentenced. Because petitioner had previously moved unsuccessfully for post conviction relief, I advised him that he cannot proceed in this court on his new claim unless he obtains certification for his new motion by a panel of the Court of Appeals for the Seventh Circuit. 28 U.S.C. § 2255(h). Therefore, I conclude therefore that no reasonable jurist would believe that defendant's application for a certificate of appealability has any merit.

Pursuant to Fed. R. App. P. 22(b), if a district judge denies an application for a certificate of appealability, the defendant may request a circuit judge to issue the certificate.

ORDER

IT IS ORDERED that no certificate of appealability will issue in this case.

Entered this 12th day of November, 2015.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge